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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 96-39

In the Matter of

Amendment of Section 73.606(b), RM-8757
Table of Allotments,
TV Broadcast Stations.
(Irma, Wisconsin)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 26, 1996; Released: March 11, 1996

Comment Date: May 2, 1996

Reply Comment Date: May 17, 1996

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by David A. White ("petitioner"), requesting the allotment of UHF television channel 30 to Irma, Wisconsin, as that community's first local television service.¹ Petitioner provided information in support of the proposal and stated his intention to apply for the channel, if allotted.

2. Irma (population 150)² in Lincoln County (population 26,933)³ is located approximately 288 kilometers (179 miles) northwest of Milwaukee.

3. We believe the proposal warrants consideration because the proposed allotment would provide the community with its first local television service. A staff engineering analysis of the proposal indicates that UHF Television Channel 30+ can be allotted to Irma, Wisconsin, consistent with the minimum distance separation requirements of Section 73.610 of the Commission's Rules without a site restriction.⁴ The proposed allotment of Channel 30+ will require a plus offset.⁵ Although the Commission has imposed a temporary freeze on new television allotments in certain metropolitan areas, the proposed allotment at Irma is not affected thereby. See *Notice of Inquiry*, 2 FCC Rcd 2125 (1987) and *Order*, 52 FR 28346,

¹ Although petitioner's request indicates that the original copy of his proposal was signed, he failed to include an affidavit verifying that the statements contained in his petition were accurate to the best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd

July 29, 1987. Since Irma is located within 400 kilometers (250 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be obtained for this proposal.

4. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "... among the several states and communities." The Commission has defined "communities" as geographically identifiable population groups. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community facts, the petitioner must present the Commission with sufficient information to demonstrate that such a place has the social, economic, or cultural indicia to qualify it as a community for allotment purposes. See, e.g., *Oak Grove, FL*, 5 FCC Rcd 3774 (1990); *Hannibal, OH*, 5 FCC Rcd 3315 (1990); and *Statenville, GA*, 5 FCC Rcd 2685 (1990). We do recognize that Irma has its own post office and zip code but it is not incorporated and it is not listed in the 1990 Census. The 1995 *Rand McNally Commercial Atlas*, however, indicates that Irma has a population of 150 persons. Therefore, petitioner is requested to submit information regarding Irma to demonstrate whether it has any commercial establishments, social, economic, cultural or religious organizations, municipal services, or governmental units that identify themselves specifically with Irma. Further, does Irma have the customary factors associated with determining community status, such as a library, schools, shopping centers, churches, a newspaper and some form of local government. See *Searles Valley, CA*, 3 FCC Rcd 5221 (1988); see also *Naples, FL*, 41 RR 2d 1549 (1977).

5. In view of the fact that the proposed allotment would provide a first local television service to Irma, the Commission believes it would serve the public interest to solicit comments on the proposal to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

		Channel No.	
City	Present		Proposed
Irma, Wisconsin	---		30+

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

3911, n.41 (1990). Petitioner is requested to rectify this omission in his comments.

² The 1995 *Rand McNally Atlas* indicates Irma has a population of 150 people.

³ Population figure taken from the 1990 Census.

⁴ The coordinates for Channel 30+ at Irma are 45-21-06 and 89-40-06.

⁵ "A station with a plus or minus offset is required to operate with its carrier frequency 10 kHz above or below the normal carrier frequency. A different offset between two television stations reduces interference and makes possible the separation criteria set forth in our Rules." *Crandon, Wisconsin*, 3 FCC Rcd 6765 n.1 (1988).

7. Interested parties may file comments on or before **May 2, 1996**, and reply comments on or before **May 17, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

David A. White
10400 Olson Drive
Eau Claire, Wisconsin 54703

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.